Supreme Court, U.S.
FILED

NO. 97-260 JUL 17 1997

OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

Rodney Beard, Petitioner,

v.

Dennis Walsh, Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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October, 1997

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QUESTION PRESENTED

Whether the Bankruptcy Court impermissibly expanded the scope of the automatic stay provision of 11 U.S.C. §362(a)(3), thereby unconstitutionally exceeding its jurisdiction as a non-Article III Judge, by determining that "property of the estate" under 11 U.S.C. §541(a) included possessory interests in personal property which were not held by the debtor during the course of the bankruptcy proceeding, but by a third party pursuant to a pre-petition contract.

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OPINIONS BELOW

The December 27, 1996 opinion of the Ninth Circuit Court of Appeals, whose judgment is herein sought to be reviewed, is reprinted in the attached Appendix to this Petition, at Appendix A. The April 18, 1997 Order of the Ninth Circuit Court of Appeals denying the petition for rehearing and rejection of suggestion for rehearing en banc is reprinted in the attached Appendix, at Appendix B. The February 27, 1995 Order of the United States District Court for the Northern District of California, acting in its capacity as a court of review, partially reversed and partially affirmed the trial court, and is not reprinted in the Appendix. The memorandum and judgment of the United States Bankruptcy Court for the Northern District of California are reprinted in the attached Appendix, at Appendices C and D, respectively.

JURISDICTION

The Judgment of the Court of Appeals was entered on December 27, 1996. On March 12, 1997, Judge Browning of that Court entered an order extending the time for filing a petition for

rehearing through and including March 24, 1997. The Court of Appeals denied the petition for rehearing and suggestion of *en banc* review by its Order entered April 18, 1997. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves interpretation and application of Title 11, Section 541(a) of the United States Codes , which provides in relevant part:

> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> > (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case . . ..

This case also involves Title 11 of the United States Codes, Section 362(a)(3), which provides in part:

> (a) Except as provided in subsection (b) of this

section, a petition filed under section 301, 302, of 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of-- . . .

> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; . . ..

Article I, Section 8 of the United States Constitution gives Congress the power to establish bankruptcy courts, as follows:

> The Congress shall have Power . . . To constitute Tribunals inferior to the supreme Court; . . .

In addition, Article III of the United States Constitution defines the limits of the bankruptcy court's jurisdiction, which provides as follows:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time

ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Further, reference is made to the bankruptcy court's Congressionally mandated jurisdictional limitations, as defined by Title 28 of the United States Codes, Section 157, which provides in relevant part as follows:

> (b)(1) Bankruptcy Judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title. . .
>
> (c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding,

the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

STATEMENT OF THE CASE

The gravamen of this case is the Ninth Circuit Court of Appeals' overly expansive interpretation of what property interests constitute "property of the estate" in a Chapter 11 bankruptcy proceeding pursuant to 11 U.S.C. §541(a). By increasing the scope of "property of the estate" beyond its Congressionally authorized limits, the Bankruptcy Court improperly invoked the automatic stay provisions of 11 U.S.C. §362(a)(3) to award damages to a debtor based on actions which interfered with possessory interests not held by the debtor during the bankruptcy proceeding.

The simple facts underlying the complex legal issues are as follows. Petitioner Rodney Beard ("Beard") is a family farmer and property owner who grows primarily apples and walnuts in the California Central Valley. Respondent and Debtor Dennis Walsh ("Walsh") owned and operated fruit packing equipment, called a "packing line." Several months prior to the filing of the bankruptcy petition, Walsh leased real property from Beard on which to install and operate his packing line. A security agreement, perfected by a UCC-1 Financing Statement, gave Beard a security interest in all of Walsh's assets, and required that the packing line remain on Beard's premises absent Beard's consent to move it.

One week prior to filing his bankruptcy, Walsh leased all of his possessory rights and interests in his packing line equipment to a California corporation named Central Valley Apple Packing, Inc. ("Central Valley"), in return for rent equal to $1 per box of fruit Central Valley packed. Central Valley was solely owned and managed by the Debtor's wife (who had not filed bankruptcy).

After filing his Chapter 11 bankruptcy petition on May 12,

1993, Walsh assumed and received Bankruptcy Court approval of the equipment lease with Central Valley. Central Valley remained in sole possession of the packing line equipment through the trial of the instant matter.

In December 1993, Central Valley began dismantling and moving the equipment to another location, and Beard acted to temporarily prevent removal of the equipment pursuant to the provision in his security agreement. Beard did so under a claim of right: to preserve the *status quo* under the security agreement pending a review of the issue by the bankruptcy court. Walsh later brought suit against Beard, claiming that his actions in interfering with removal of the packing line equipment from the property, absent a court order, violated the provisions of the automatic stay of 11 U.S.C. §362(a)(3). Walsh's claim for damages was based on Central Valley's failure to obtain a fruit packing contract from another party (due to Beard's actions in delaying removal of the equipment for one day), which resulted in a loss to Walsh of rent due under the equipment lease from Central Valley.

Walsh was not a party to the fruit packing contract, nor did he have any control over whether that contract would be performed; he was simply entitled to receive rent from Central Valley if it packed fruit. Yet, the bankruptcy court found that Beard's actions in interfering with Central Valley's attempts to move the equipment had the effect of preventing the consummation of this third-party fruit packing contract, which had the collateral effect of reducing income to Walsh from Central Valley under the equipment lease, justifying an award of $100,000 against Beard in compensatory damages to Walsh.

At the same time the matter was pending in Bankruptcy Court, Central Valley filed state law tort claims against Beard requesting the identical relief as in the bankruptcy action, i.e., lost profits based on Beard's alleged interference with Central Valley's removal of the packing line equipment, resulting in Central Valley's loss of a fruit packing contract. Beard was entitled to a jury trial under such claims.

THE RULINGS BELOW

The Bankruptcy Court found that Beard's actions in interfering with Central Valley's removal of the equipment from his real property violated the automatic stay of 11 U.S.C. §362(a)(3).[1] The Court assessed compensatory damages of $100,000 pursuant to Walsh's claim that the one-day delay in moving the equipment resulted in Central Valley losing a fruit packing equipment which would have netted $100,000 to Walsh. The Bankruptcy Court also awarded an additional $100,000 in punitive damages, plus attorney's fees and costs.

Beard appealed the Bankruptcy Court's Judgment to the District Court for the Northern District of California, which partially reversed the Bankruptcy Court by discounting $2,500 in awarded attorney's fees, but affirmed the remainder of the Bankruptcy Court's Judgment. The Ninth Circuit Court of Appeals affirmed the decision of the District Court in full. The Circuit Court held that Beard had interfered with two of Walsh's property interests: his "property" interest in the equipment, and

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[1] Appendix ("App.") A, *infra*, 9A.

his right to receive income under the equipment lease with Central Valley. App. A, *infra*, 4A-5A.

Beard sought rehearing of the Circuit Court's decision, and suggested *en banc* review, on the ground that it ran contrary to prior decisions of that Court as well as a decision of the District of Columbia Court of Appeals. The Ninth Circuit Court of Appeals subsequently denied Beard's petition for rehearing and suggestion for *en banc* review.

REASONS FOR GRANTING THE WRIT

I. The Ninth Circuit Court of Appeals' Decision Unconstitutionally Expands the Jurisdiction of the Bankruptcy Courts Beyond Their Constitutional and Statutory Limitations, which is a Federal Law Issue of National Significance Requiring Determination by this Court

This Court has previously declined to decide the issue presented in this case because it was not properly before the Court; namely, whether possessory interests held by a third party (not in a levy proceeding) are property of the bankruptcy estate under 11 U.S.C. §541(a) (hereinafter "§541(a)"). See United States v. Whiting Pools, Inc., 462 U.S. 198 103 S. Ct. 2309,

2315-16, 76 L. Ed. 2d 515 (1983) (This Court expressly declined to decide whether any property of the debtor in which a third party holds a possessory interest independent of a creditor's remedies is subject to the turnover provisions under 11 U.S.C. §542(a), as it was not an issue properly before the Court.). Now, however, the time is ripe for such a ruling.

The Ninth Circuit Court of Appeals' decision greatly expands the definition of "property of the estate" under §541(a) to include possessory interests which are not held by the bankruptcy estate, but are instead held by a third party under a pre-petition contract. By doing so, that Court has concomitantly expanded the scope and application of the automatic stay of 11 U.S.C. §362(a)(3) (hereinafter "§362(a)(3)"), thereby permitting the bankruptcy court to far exceed its constitutional and statutory jurisdictional limitations.

Yet, this Court's mandate in Northern Pipeline Const. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982), precludes a bankruptcy court (non-Article III court) from adjudicating State Law claims which are independent

of and antecedent to the petition for reorganization that conferred jurisdiction upon the bankruptcy court. Northern Pipeline, 102 S.Ct. at 2878. Because the independence and other protections afforded Article III judges do not apply to bankruptcy judges under Article I, the Court concluded that bankruptcy judges cannot constitutionally adjudicate rights not created by Congress. Id. After Northern Pipeline, Congress specifically limited bankruptcy courts' jurisdiction over disputes that are "related to" a bankruptcy case pursuant to 28 U.S.C. §157(c)(1), but gave bankruptcy courts the right to enter final orders in "core" matters arising out of the administration of the bankruptcy estate under 28 U.S.C. §157(b).

Based on these jurisdictional limitations, the bankruptcy court in the present matter exceeded its Constitutional and Congressional limitations in this case by so broadly defining "property of the estate" that it adjudicated what was actually a State Law claim between two non-debtor parties as a "core" proceeding under 28 U.S.C. §157(b). By doing so, the bankruptcy court denied Beard constitutional protections afforded

him under Article III of the United States Constitution.

The Ninth Circuit's decision which justifies its expansive affirmance of the judgment is based on the tautology that, because the debtor owned the personal property equipment, any actions to "exercise control" over the possession of the property *de facto* affected the debtor's property, even though the debtor did not have possession, nor could he claim possession, to the property. It is undisputed that the debtor's actual property interest in the equipment, the ownership interest, was not affected in any way. Yet, the Ninth Circuit concluded that interference with possession affected "property of the estate" simply because the debtor owned the property. By ignoring what the debtor's true property interest was in the equipment under §541(a), that is, what interest the debtor held in the property at the time the bankruptcy estate was created, the Court's reasoning becomes a linguistic fallacy.

Property of the estate is strictly confined in §541(a) to the property interests the debtor held at the time the bankruptcy petition was filed. At that time, the bankruptcy estate takes its interest in property subject to the conditions under which the

debtor held the interest.[2] The scope of what constitutes property of the bankruptcy estate under §541(a) is critical: it affects not only the debtor's property rights and remedies, but also non-debtor's property rights, interests, and conduct with respect to property in which the debtor claims an interest. Determination of what precise interest constitutes property of the estate also establishes the applicability and scope of the extraordinary provisions for turnover of property of the estate under 11 U.S.C. §542, as well as the provisions of the automatic stay of §362(a).

Deciding the interests constituting property of the estate is particularly crucial when confronting the application of the automatic stay provisions of §362(a)(3), which prohibits actions by others to obtain possession or "exercise control over property of the estate." The broad language of this section requires that

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2 As this Court has previously decided, whether a debtor has an interest in property and, if so, the precise nature of that interest, are not defined in the Bankruptcy Code. State law must be used to determine whether property is an asset of a debtor, and to determine the nature of those property rights. See Butner v. U.S., 4899 S.Ct. 914, 59 L.Ed.2d 136 (1979).

determining the extent of property of the estate which is subject to the automatic stay must be carefully construed to effect Congressional intent and Constitutional mandates.[3] If the determination of what constitutes property of the estate under §541(a) is interpreted too broadly, the automatic stay of §362(a)(3) can be applied to issues which are truly State Law issues only, between two non-debtor parties, under the guise that they are "core" proceedings under bankruptcy court's jurisdiction of 28 U.S.C. §157(b). This result permits debtors to litigate State Law created rights, without the jurisdictional limitations afforded by 28 U.S.C. §157(c), thereby violating the protections granted in Article III of the United States Constitution.

In this case, a State Law tort claim between two non-debtor third parties was tried in the bankruptcy court as a core proceeding under the guise of the automatic stay of §362(a)(3).

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[3] Congress has mandated that §541 "is not intended to expand the debtor's rights against others more than they exist at the commencement of the case." H.R. Rep. No. 595, 95th Con., 1st Sess. Reprinted in 1978 U.S. Code & Cong. & Ad. News 5787.

The actual claim adjudicated was that Beard interfered with the consummation of Central Valley's potential fruit packing contract. Resolution of this State Law contractual interference claim under §362(a)(3) was permissible only because the bankruptcy court determined that the possessory interests in personal property, which the debtor did not hold during the bankruptcy proceeding, constituted property of the estate under §541(a). By making this finding, the Court adjudicated what was actually a State Law tort claim dispute between Beard and the equipment lessee, Central Valley, at a time when Central Valley was pursuing the tort claim in State Court as well. Bootstrapping this State Law claim under the provisions of §362(a)(3) unconstitutionally expanded the bankruptcy court's jurisdiction under Article III of the United States Constitution.

The Ninth Circuit also determined that Beard's actions violated the automatic stay because they affected income generated by the Central Valley equipment lease, which lease was itself property of the estate. Not only is such a conclusion beyond the express language of §362(a)(3), but it dramatically expands

the scope of the automatic stay to include all sorts of disputes between non-debtor parties based on State Law. If a debtor's lease contract with a third party provides that the debtor shall only reap the benefits of the contract if the third party performs, any action which prevents the third party from performing under the lease constitutes a violation of the automatic stay. Thus, any person responsible for interrupting the business of the lessee under a percentage lease risks violating the automatic stay because the debtor's income under the lease is threatened.

The result of the Ninth Circuit's decision is that it has created a right for a third party to claim the protections and benefits of the automatic stay of §362(a)(3) without being required to file bankruptcy. The Ninth Circuit sanctioned this result only because it ignored the remoteness of the link between the person interfering with the contract and the debtor. In other words, the debtor and the interfering party are two steps removed from each other, not in privity of contract or otherwise connected to each other. Under these circumstances, interference with a third parties' interest in possession of property and right to

contract, regardless of any resulting affect it may collaterally have on the debtor's income, is an issue "unrelated" to the administration of the bankruptcy estate, and not a "core" matter under 28 U.S.C. §157(b). This type of proceeding goes beyond the bankruptcy court's permissible jurisdiction, requiring adjudication by an Article III court, and requiring reversal of the Ninth Circuit's decision in this matter.

II. The Court of Appeal's Decision and Interpretation of Property of the Estate under 11 U.S.C. §541(a), as it Applies to the Automatic Stay Provisions of 11 U.S.C. §362(a)(3), Conflicts with the District of Columbia Court's Decision in Inslaw

The Ninth Circuit Court's of Appeal's decision directly contradicts the District of Columbia Circuit's opinion in United States of America v. Inslaw, Inc., 932 F.2d 1467, 1472 (Dist. of Columbia Cir. 1991), cert. denied, 112 S.Ct. 913 (1991) (hereinafter referred to as Inslaw).[4]. The Inslaw decision provides

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[4] Inslaw was previously cited with approval by the Ninth Circuit Court of Appeals in In Re Chugach Forest Products, Inc., 23 F.3d 241, 245 (9th Cir. 1994). See also, In re Merrick, 175 B.R. 333, 337 (9th Cir. BAP 1994).

that, where ownership but not possession of personal property is property of the bankruptcy estate, and a creditor holds possession of the property under a claim of right, no violation of the automatic stay occurs even though the creditor refuses to return the property to the debtor. The Inslaw Court found that expanding the definition of "property of the estate" to include possessory rights not held by the debtor at the time the petition was filed would impermissibly expand the application of the automatic stay under §362(a)(3). Inslaw, 932 F.2d at 1472-3. If applied in these types of circumstances, the sweep of the automatic stay would be extraordinary, and beyond constitutional limitations. Id.

In contravention to the Inslaw decision, the Ninth Circuit Court's decision in the present matter provides that, even if possessory rights in personal property are not "property of the estate," a person can violate the automatic stay if he interferes with possession of the property, even when done under a claim of right. Like the case in Inslaw, Walsh did not claim that Beard interfered with his ownership interests in the packing line

equipment (which did constitute property of the estate), by attempting to levy or otherwise affecting title to the property. Beard only temporarily delayed Central Valley's attempts to move the property, which affected the physical possession of the property held solely by Central Valley, and not the bankruptcy estate.

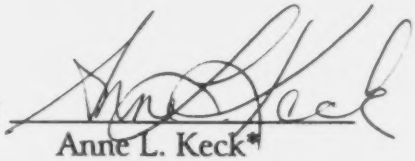
The dangers raised by the Inslaw Court against expanding the definition of "property of the estate" and scope of the automatic stay are apparent in the Ninth Circuit's instant opinion. Based on interference with possession of property which was not held by the debtor, the bankruptcy court adjudicated a State Law tort claim for contractual interference between two non-debtor third parties under §362(a)(3), even though the debtor had no interest in and was not a party to that contract. In upholding this result, the Ninth Circuit sanctioned a third party, non-debtor's rights to claim the benefit and protections of the automatic stay without filing bankruptcy. This effect goes so far beyond the language, purpose and intent of §362(a)(3) as to constitute an unconstitutional exercise of the bankruptcy court's jurisdiction,

requiring reversal of the Ninth Circuit's decision.

CONCLUSION

Wherefore, Petitioner prays that a Writ of Certiorari issue from this Honorable Court to review the decision of the Ninth Circuit Court of Appeals in Dennis R. Walsh v. Beard's Quality Nut Company. In the event that the Petition is granted, Petitioner prays that the judgment of the Bankruptcy Court below be reversed, and that the cause be remanded for entry of judgment accordingly.

Dated: July 17, 1997

By: 

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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: DENNIS R. WALSH, Debtor. DENNIS R. WALSH, dba Sebastopol Apple Growers United dba Sagu, Inc., Plaintiff-Appellee, v. RODNEY BEARD, dba Beard's Quality Nut Company, Defendant-Appellant.	No. 95-15667 D.C. No. CV-94-03641-DLJ MEMORANDUM

Appeal from the United States District Court
for the Northern District of California
D. Lowell Jensen, District Judge, Presiding

Argued and Submitted December 12, 1996
San Francisco, California

Before: BROWNING, SKOPIL, and BRUNETTI, Circuit Judges

The parties are familiar with the facts, so we will not restate them.

I.

The bankruptcy court had jurisdiction over Dennis Walsh's lawsuit against Rodney Beard. See 28 U.S.C. § 157. While Beard injured Central Valley Apple Packing, a non-debtor, he also injured Walsh's bankruptcy estate by violating the automatic stay. Walsh asked the bankruptcy court to adjudicate the automatic stay action, not Central Valley's tortious interference claim.

II.

Walsh gave Beard sufficient notice of the automatic stay claim by giving him a fair idea of the factual and legal basis for the claim. See Self Directed Placement Corp. v. Control Data Corp., 908 F.2d 462, 466 (9th Cir. 1990). Walsh alleged in his complaint that Beard had violated the automatic stay by refusing him and Central Valley access to the packing line. (ER 2, 21.) He also asserted that Beard's behavior kept him from reassembling the line at a new location and increased his moving costs. (Id.)

Because the complaint gave Beard fair notice of Walsh's

automatic stay claim, Walsh was entitled to appropriate relief as the prevailing party, even if he did not pray for it. See Electrical Const. & Maintenance Co. v Maeda Pac. Corp., 764 F.2d 619, 622 (9th Cir. 1985); see also Fed. R. Civ. P. 54 (c); Bankr. R. 7054 (a).

III.

The bankruptcy court did not abuse its discretion by allowing Beard to conduct only limited discovery after the discovery cutoff date had passed. Beard admits that he conducted no discovery before the discovery cutoff date, and this court has held that denying discovery to parties who have not diligently sought it is not an abuse of discretion. See Sopcak v. Northern Mountain Helicopter Serv., 52 F. 3d 817, 819 (9th Cir. 1995).

IV.

The bankruptcy court did not abuse its discretion when it denied Beard's motion to continue the trial. Because the bankruptcy court granted Walsh's motion to strike the counter-claim, conducting discovery regarding the counter-claim would

have been useless. Furthermore, Walsh did not include any new factual allegations in his amended complaint; he simply added a request for punitive damages. Because the basis for Walsh's automatic stay claim did not change, Beard did not need significant additional trial preparation time.

V.

The bankruptcy court did not err in finding that Beard violated the automatic stay. Under California law, Walsh, the owner of the packing line, had a property interest in the line even though Central Valley had leased the right to use and possess it. See J.S. Potts Drug Co. v. Benedict, 104 P. 432, 436 (Cal. 1909). He also had a property interest in the proceeds that the packing line generated because he was contractually entitled to $1 for every box of produce packed on the line.

By refusing Walsh and Central Valley access to the packing line, Beard exercised control over Walsh's property and interfered with Central Valley's right to possess the line. The exercise of control over the packing line violated the automatic stay. See 11 U.S.C. § 362 (a)(3).

The fact that Beard exercised only temporary control over property of the estate does not negate a finding that he violated the automatic stay. See Chugach Timber Corp. v. Northern Stevedoring & Handling Corp. (In re Chugach Forest Prods., Inc.), 23 F.3d 241, 244 (9th Cir. 1994). His actions undermined the purpose of the stay by precluding the bankruptcy estate from receiving proceeds from the packing line. Walsh's undisputed testimony was that these funds were necessary to his reorganization. (RT 78:24-79:1.) Therefore, the loss of these funds impeded his reorganization. Additionally, Beard's actions damaged other creditors who might have received a share of the proceeds from the packing line.

VI.

The damage award was not clearly unsupported by the evidence or grossly excessive. Evidence in the record shows that Walsh's damages were not speculative. A Pacific West representative testified that he had at least 100,000 boxes of fruit for Central Valley to pack. (RT 145.) Central Valley had agreed to give Walsh $1 for each box it packed. (SER 10.)

Walsh's damages were causally connected to Beard's actions. The Pacific West representative testified that he terminated his agreement with Central Valley because Beard's actions made the timing of the packing line move uncertain. (ER 80-81, 86.) Beard could have foreseen that Walsh would lose revenue if he was unable to move the packing line and reassemble it. Finally, because Beard continued to interfere with the effort to remove the packing line after the bankruptcy court issued a restraining order, Central Valley could not represent to Pacific West in good faith that it could deliver the packing line in a timely manner.

The bankruptcy court had evidentiary support for its decision to award punitive damages. The record shows that Beard behaved egregiously. He lied about having obtained a court order, attempted to commit bribery, and continued to exert control over the packing line after the bankruptcy court issued an order enjoining him from doing so.

AFFIRMED.

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: DENNIS R. WALSH,	)	No. 95-15667
	)	
Debtor.	)	D.C. No.CV -94-03641-DLJ
DENNIS R. WALSH, dba Sebastopol Apple Growers United dba Sagu, Inc.,	)	ORDER
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	
RODNEY BEARD, dba Beard's Quality Nut Company,	)	
	)	
Defendant-Appellant.	)	

Before: BROWNING, SKOPIL, and BRUNETTI, Circuit Judges

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for an en banc rehearing, and no judge of the court has requested a vote

on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX C

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

DENNIS R. WALSH, No. 93-11166

Debtor.

_____/

DENNIS R. WALSH,

Plaintiff,

v. A.P. No. 93-1299

BEARD'S QUALITY NUT CO.,
and RODNEY BEARD,

Defendants.

_____/

Memorandum of Decision

Debtor Dennis Walsh owns modern, computerized fruit packing equipment. In February, 1993, Walsh agreed to move his equipment from Sebastopol, California, to premises leased from defendant Rodney Beard in Modesto, California. Beard agreed to pay for the move in return for a junior security interest in the equipment. The agreement was thought by both sides to be beneficial, as Walsh would have access to the larger Central

Valley market and Beard would have an in-house facility for the packing of his fruit.

Walsh filed his Chapter 11 petition on May 12, 1993, and continued on in possession of his estate as debtor in possession. Beard was fully aware of the filing.

In November, 1993, Beard approached Walsh with an offer to purchase the equipment "under the table." Walsh rejected the offer. Beard then served Walsh with three-day and thirty-day notices to quit. The grounds for the notices were that the insurance was in the name of a corporation owned by Walsh's wife instead of in Walsh's name, and that Walsh was a debtor in bankruptcy.

Walsh, seeing that relations between him and Beard were deteriorating and that he had an opportunity to pack oranges in the Bakersfield area, began to dismantle the equipment. This made Beard angry, as Beard's intent was to remove Walsh from the premises while keeping the equipment. On the first day he discovered the dismantling, he falsely told the workers that he had a court order forbidding the removal of the equipment. This

caused the workers to stop work for the day.

On the next day, when Walsh's workers returned to continue the dismantling, Beard cut off all power to Walsh's premises. When the workers proceeded with flashlights and cutting torches, Beard had one of his employees offer Walsh's employees a cash bribe to leave, which they rejected. Beard changed the lock to the main gate, and had his employees block the gate and deny access to a truck dispatched to begin hauling the equipment away.

Finally, the matter came before this court on complaints by both Walsh and Beard for injunctive relief. Largely due to Beard's clearly wrongful conduct, the court denied his request for relief and gave Walsh an order forbidding Beard from interfering with the move.

Thereafter, Beard's obstruction took on a passive-aggressive nature. He refused to restore power or give Walsh a key to the gate, but did not actively impede the move. Walsh was able to complete the move about four or five days later than he had anticipated. However, the few days delay had cost him

the opportunity to pack oranges as he had intended. He moved the equipment to a storage facility, where it awaits a new harvest season.

In this adversary proceeding, Walsh seeks actual damages of over $1.5 million for lost orange packing business and increased moving expenses. He also seeks punitive damages and attorneys' fees. All of these are recoverable pursuant to section 362 (h) of the Bankruptcy Code if they result from a willful violation of the automatic stay.

Beard clearly knew about the bankruptcy; he included it (wrongfully) as one of the trumped-up charges in his notices to quit. Assuming that the notices to quit were not themselves violations of the automatic stay because Walsh had not sought to have the lease assumed, Beard's subsequent actions were all done without obtaining relief from the stay and with intent to gain sole possession of the equipment. They were thus blatant violations of section 362 (a)(3). Moreover, Beard's attempts to bribe Walsh and Walsh's employees were bankruptcy crimes pursuant to 18 U.S.C. section 152.

Beard's passive interference after this court's injunction was just as much a violation of the automatic stay as the termination of the power and blocking the gate. A willful violation of the stay occurs whenever a party fails to take reasonable action within a reasonable time to correct a prior violation of the stay. In re Abrams, 127 B.R. 239, 243 (9th Cir. BAP 1991).

Because these matters occurred at a crucial time in the orange packing season, the few days delay caused by Beard cost Walsh far more than just the extra expenses involved in moving. However, the $1.5 million in damages claimed by Walsh is too speculative, given Walsh's inexperience with oranges and the fact that he has never yet generated that kind of revenue. However, the court is convinced that Walsh did lose at least $100,000.00 due to the delays caused by Beard and will award actual damages in this amount, in addition to $3,000.00 in extra labor and transportation costs.

Walsh proved legal fees in the amount of $39,010.76 incurred in this matter. Those fees are reasonable in light of the

work involved to preserve the estate, and will be recovered from Beard.

Beard's actions were among the most egregious violations of the automatic stay the court has seen, and punitive damages are therefore most necessary. The court assesses them as follows:

1.	Lying about having a court order:	$5,000.00
2.	Cutting off the power:	$20,000.00
3.	Blocking the gate:	$10,000.00
4.	Attempting to bribe Walsh:	$25,000.00
5.	Attempting to bribe workers:	$10,000.00
6.	Changing the lock to the gate:	$10,000.00
7.	Failing to restore power:	$10,000.00
8.	Failing to give Walsh a key to the gate:	$10,000.00.

For the foregoing reasons, Walsh shall have judgment against both Beard and his corporation for $103,000.00 in actual damages, $100.000.00 in punitive damages, $39,010.76 in attorneys' fees, and costs of suit. The judgment shall bear interest at the legal rate.

Because of the finding that Beard attempted to bribe Walsh and his employees, the clerk shall send a copy of this decision to the United States Attorney.

This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for plaintiff shall submit an appropriate form of judgment forthwith.

Dated: June 7, 1994

Alan Jaroslovsky,
U.S. Bankruptcy Judge

APPENDIX D

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1747 Fourth Street
Santa Rosa, California 95404

(707) 528-4331
Attorney for Plaintiff

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:	)	Case No. 93-11166
DENNIS R. WALSH, dba	)	Chapter 11
SEBASTOPOL APPLE	)	
GROWERS UNITED , dba	)	
SAGU, INC.	)	A.P. No. 93-1299
	)	
Debtor.	)	
	)	
DENNIS R. WALSH,	)	
	)	JUDGMENT AFTER
Plaintiff,	)	TRIAL
	)	
v.	)	
	)	
BEARD'S QUALITY NUT CO.,	)	
RODNEY BEARD,	)	
	)	
Defendants.	)	
	)	

The above captioned matter having regularly come on for trial before the above entitled Court on June 3, 1994, David N.

Chandler appearing for Plaintiff Dennis Walsh and Anne Keck, Bronson, Bronson, & McKinnon, appearing for Defendant Rodney Beard, individually and dba Beard's Quality Nut Company, evidence having been taken, the cause argued and submitted, and this Court having filed its Memorandum of Decision on June 7, 1994, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED and decreed as follows:

1. Plaintiff Dennis Walsh shall have and recover from defendant Rodney Beard, individually, and doing business as Beard's Quality Nut Company, the sum of $103,000.00 in general damages.

2. Plaintiff Dennis Walsh shall further have and recover from Defendant Rodney Beard, individually, and doing business as Beard's Quality Nut Company, the sum of $100,000.00 as and for exemplary and punitive damages.

3. Plaintiff Dennis Walsh shall have and recover from Defendant Rodney Beard individually and doing business as Beard's Quality Nut Company the further sum of $39,010.76 attorneys fees.

4. Plaintff Dennis Walsh shall have and recover the sum $3,220.32 costs for Defendant Rodney Beard's Quality Nut Company.

Dated: June 22, 1994

Alan Jaroslovsky
United States Bankruptcy Judge

APPENDIX E

Title 11, Section 541(a) of the United States Codes provides in relevant part:

> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> > (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case. . .

11 U.S.C. §541(a).

Title 11 of the United States Codes, Section 362(a)(3), provides in relevant part:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, of 303 of this title, or an application filed under

section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of-- . . .

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; . . . .

11 U.S.C. §362(a)(3).

Article I, Section 8 of the United States Constitution provides in relevant part:

The Congress shall have Power . . . To constitute Tribunals inferior to the supreme Court; . . .

U.S. Const., Art. I, §8.

Article III of the United States Constitution, Section 1, provides as follows:

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the

supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

U.S. Const., Art. III, §1.

Title 28 of the United States Codes, Section 157, provides in relevant part:

(b)(1) Bankruptcy Judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title. . .

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit

proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

28 U.S.C. §157(b)(1) and (c).